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SUBJECT: 2007 REPORT ON INVESTMENT DISPUTES AND EXPROPRIATION
CLAIMS: ARGENTINA

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REF: A. SECSTATE 55422
[1](#)B. 2004 BUENOS AIRES 1725
[1](#)C. 2005 BUENOS AIRES 1519
[1](#)D. 2006 BUENOS AIRES 1362

[1](#)1. (U) The following report outlines new and ongoing investment disputes between the GOA and US investors, following an action request cable (Ref A), and updating Post's 2004 Investment Disputes Report (Ref B), and its subsequent 2005 and 2006 updates (Refs C and D). There were no new disputes filed in during 2006. Post is aware of 13 active disputes. During 2006, two disputes were formally settled (Claimants B and I). One dispute has been suspended formally, but remains active (Claimant F). Finally, another dispute was settled (Claimant M), but because its discontinuance is yet to be formally registered, the case is still reported active.

[1](#)2. (SBU) Many of these claims arise in whole or in part from the GOA's implementation of Emergency Law 25,561 on January 6, 2002. This law (among other things) converted contract provisions denominated in US dollars into Argentine pesos at a 1:1 rate and rescinded previously-sanctioned indexation of contracts to US inflation indices. US investors contend that such measures unilaterally derogate contractual agreements and effectively expropriate US investor capital.

[1](#)3. (SBU) (a) Claimant A

(b) 2002

(c) Claimant A is a US energy sector utility with gas distribution assets in Argentina. Its dollar-based gas distribution contracts in Argentina were linked to the US producer price index. In March

2002, Claimant A initiated consultations under ICSID, claiming that various provisions of Emergency Law 25,561 voided its distribution contracts and effectively expropriated its capital investment. Claimant A also charged that the GOA had failed to pay contractually mandated subsidy payments in compensation for pricing its gas at below market rates. Claimant A filed for ICSID arbitration on September 10, 2002. Its request for arbitration was accepted on December 6, 2002. On February 27, 2003, Claimant A's business partner filed an arbitration claim under a bilateral investment treaty between Luxembourg and Argentina. The two claims will be treated jointly. ICSID ruled against GOA's objections to its jurisdiction. Both parties filed post-hearing briefings on April 3, 2006. In April 2007, the GOA and Claimant A's business partner reached an agreement on tariff increases and domestic investment, which included a settlement to discontinue all ICSID cases. Formally, the portion of the dispute brought by Claimant A's business partner, which was to be treated jointly with that of Claimant A's, has not been suspended before ICSID, but it is expected to be discontinued shortly. However, Claimant A has continued with the case.

14. (SBU)(a) Claimant B, first case

(b) 2001

(c) Claimant B, a US energy sector firm, has a substantial minority investment in an Argentine gas pipeline whose dollar-based transmission contract was linked to the US producer price index. Claimant B initiated preliminary consultations under ICSID arbitration guidelines in September 2001 following a GOA decision to cease approving index-related increases in gas transmission fees. In May 2002, Claimant B began a process to expand its ICSID claim to

address certain provisions of Emergency Law 25,561. Claimant B filed for ICSID arbitration on March 19, 2003. ICSID agreed that this dispute would be heard by the same arbitration panel hearing Claimant B's second arbitration claim against the GOA (see below). ICSID issued a ruling on jurisdiction in January 2004 in favor of Claimant B. The tribunal held a final hearing on the merits in November 2005. On May 22, 2007, ICSID ruled against Argentina in this case. The ruling was for \$106.2 million in damages. In addition to the compensation award, the ICSID arbitral panel ruled that the GoA must pay interest of Libor plus 2%, retroactive to January 2002.

15. (SBU)(a) Claimant B, Second Case - SETTLED

(b) 1996

(c) Six western Argentine provinces are attempting to collect over \$3 billion in retroactive stamp tax and gross receipts tax duties from international energy companies operating in their jurisdictions. Claimant B registered its claim with ICSID on April 11, 2001. Because Claimant B asserts that it does not have any stamp tax liability, there is no information on the amount of this claim. In April, 2004, in a separate but similar case, the Argentine Supreme Court ruled that the stamp tax levies imposed by a province not linked to this case were invalid. Thereafter, Claimant B and the GOA agreed to suspend the case. On December 8, 2005, the ICSID tribunal issued a procedural order on discontinuance of the stamp tax claim embodying the parties' agreement on the discontinuance.

16. (SBU)(a) Claimant C

(b) 2000

(c) Claimant C is a US energy sector infrastructure firm, which operates natural gas pipelines in Argentina through a local company, under a licensed granted to the local company by the GOA. The Argentine gas legal framework and the local company's license linked the tariffs for gas transmission services to the US producer price index. On October 20, 2000, following a decision by the GOA to cease approving index-related increases in gas transmission tariffs, Claimant C initiated preliminary consultations with the GOA under the US-Argentine Bilateral Investment Treaty. On July 24, 2001, Claimant C filed for ICSID arbitration, claiming over \$100 million

in compensation. On January 6, 2002, the GOA passed Emergency Law 25, 561, which abolished adjustments and indexation clauses in contracts contained in licenses, and converted all dollar-denominated tariffs into pesos at the mandatory rate of 1 peso per USD. On February 13, 2002, Claimant C wrote to the GOA, saying these measures further affected Claimant C's property rights and were tantamount to an expropriation. On July 5, 2002, Claimant C submitted its Memorial seeking \$261.1 million in damages from the GOA for expropriation of its investment. On May 12, 2005, Claimant C received an award of \$133.2 million from the ICSID tribunal, with interest to date of payment, and granting a right to the GOA to purchase Claimant C's interest in the local subsidiary for an additional payment. On September 27, 2005, the GOA filed an application for institution of annulment proceedings. An annulment panel has been formed and the first hearing in the annulment process was held June 5, 2006.

17. (SBU)(a) Claimant D

(b) 2000

(c) Claimant D is a diversified US energy sector firm with gas transmission assets in Argentina, whose dollar-based transmission

contract was linked to the US producer price index. In October 2000, following a GOA decision to no longer approve index-related increases in gas transmission fees, Claimant D initiated preliminary consultations under ICSID arbitration guidelines. It formally filed for ICSID arbitration in March 2001. In May 2002, Claimant D began a process to expand its ICSID claim to include provisions of Emergency Law 25,561. On April 30, 2004, the arbitral panel issued its decision on jurisdiction, ruling in favor of Claimant D on all jurisdictional issues. In September 2006, the Tribunal decided on liability, based upon the GOA's assertion that provisions of Emergency Law 25,561 were adopted pursuant to a "state of necessity" that reflected the rights of the GOA to pursue "measures necessary for the maintenance of public order...or the protection of its own essential security interests" as recognized under Article XI of the U.S. - Argentine Bilateral Investment Treaty. The Tribunal concluded that the GOA underwent a "state of necessity" starting December 1, 2001 and ending April 26, 2003. The tribunal said a) that the claim for expropriation of the investment was dismissed; b) that Argentina breached the standard of fair and equitable treatment, no less favorable treatment than that to be accorded under the international law, and adopted discriminatory measures, causing damage to Claimant D; and c) that the standard prohibiting the adoption of arbitrary measures was not deemed to have been violated. During the state of necessity, the tribunal ruled the Argentine Republic was exempted from the payment of compensation for damages incurred; however, the Argentine Republic was liable for damages outside that period. Damages, including interest, as well as specification of the periods during which the respondent incurred in violation of its international obligations, are to be determined in a next phase of the arbitration.

18. (SBU)(a) Claimant E, First Claim

(b) 2001

(c) Claimant E is a water resource management company that, through a local subsidiary, won a 30-year concession in 1999 to manage a significant share of Buenos Aires province's water and wastewater management facilities. Many of its tariff rights under the Concession Contract were effectively repudiated by the Province when the water in one city turned sour in April 2000 because of algae in the local reservoir, which was under the Province's exclusive control. According to Claimant E, provincial officials blamed Claimant E for the problems, refused to allow the company to bill for its services, required the company to provide bottled water to the town at the company's expense, and publicly announced that people should not pay their water bills. The Province also allegedly repudiated Claimant E's right to amortize its bid payment.

In January 2001, Claimant E filed for ICSID arbitration. Following unsuccessful settlement efforts, an ICSID panel was constituted in July 2001, and the case was formally accepted by the panel in September 2001. While the arbitration case remains in process, Claimant E filed for bankruptcy in December 2001 and returned operation of all its water and wastewater management facilities to

provincial authorities in March 2002. The final hearing on the merits was held in March 2005. In June 2006, the Tribunal decided that the Respondent failed to accord full protection and security to the investment and that the respondent breached the BIT by taking arbitrary measures that impaired the claimant's use and enjoyment of its investment. Therefore, it awarded compensation to Claimant E of US\$165.2 million. The Argentine Republic registered an annulment proceeding on December 11, 2006 to contest the award.

¶9. (SBU)(a) Claimant E, second claim

(b) 2003

(c) Claimant E held, through a local subsidiary, a concession to manage a significant share of Mendoza province's water and wastewater management facilities. Claimant E filed for ICSID arbitration in 2003, alleging that by interfering with Claimant E's contractual rights, the province effectively repudiated its concession. ICSID registered the claim on December 8, 2003. Each side has appointed an arbitrator, but a panel president has not yet been selected.

¶10. (SBU) (a) Claimant F

(b) 2002

(c) Claimant F owns and operates several hydrocarbon and hydroelectric power plants in Argentina, and has electricity distribution concessions in the Province of Buenos Aires. In March 2002, Claimant F pursued informal negotiations, claiming that the pesification of its dollar-denominated distribution contracts and the devaluation of the peso, have resulted in the effective expropriation of a large portion of the value of Claimant F's investment. In April 2005, one of Claimant F's subsidiaries signed a definitive agreement on re-negotiation of its concession agreement with the GOA. The agreement was ratified by the Argentine Congress in May. As part of that agreement, Claimant F agreed to suspend its claim, and to definitively drop its claim if a tariff agreement were approved. Parties requested the suspension of proceedings, which the Tribunal accepted on December 29, 2006. Additionally, the portions of the proceedings referring to the Claimant's other two distribution subsidiaries, were discontinued after Claimant F reached an agreement with the provincial government.

¶11. (SBU)(a) Claimant G

(b) 2001

(c) Claimant owned an interest in an oil and gas company involved in the exploration for and production of hydrocarbons in Neuquen, Rio Negro, Santa Cruz, Tierra del Fuego and Mendoza Provinces of Argentina. On February 25, 2002, Claimant G requested consultations, claiming over \$100 million in damages allegedly resulting from the pesification of its contracts, the dilution of fiscal credits, the imposition of export taxes, the losses on sales due to the exchange rate, and the imposition of an oil export tax in alleged violation of 1992 decrees guaranteeing export tax stability.

On October 16, 2002, Claimant G filed notice of its intention to negotiate before beginning formal ICSID arbitration. ICSID formally registered the claim on June 5, 2003. On April 4, 2005, both sides filed a request with ICSID for the discontinuance of proceedings based on a final settlement agreement between the parties. On June 23, 2005, the Tribunal issued an order taking note of the discontinuance pursuant to Arbitration Rule 43(1) issued by the Tribunal on June 23, 2005.

¶12. (SBU)(a) Claimant H

(b) 2001

(c) Claimant H is an information systems provider that won a \$37 million public bid contract to provide information services to the judicial branch. The contract amount was payable in 36 equal, monthly installments beginning when the system was completed. Work started in early 1998. 85 percent of the work had been completed by November 1999, and the remaining 15 percent was completed in December 2000. During work on the contract, Claimant H agreed to do

\$30 million in additional information systems work for the GOA. It also provided the GOA with \$3.5 million in postal machinery. In January 2001, the GOA began paying for the 85 percent work completed

in November 1999, and in February 2001, on the remaining 15 percent.

In December 2001, the contract was pesified by law when Argentina did away with its fixed, 1-to-1 conversion system with the US dollar. From January 2002 through April 2003, the GOA made no payments under the contract, even after it had been pesified.

Claimant H filed notice of its intention to pursue ICSID arbitration in October 2002. It held friendly consultations with the GOA in February 2003 without success. ICSID formally registered Claimant H's claim on October 15, 2003. The claim is based on allegations of the pesification of the original contract, the refusal to recognize the additional work done under the contract, and the non-payment from February 2002 through April 2003. Total claim amount is approximately \$55 million. According to Claimant H, it did not include a claim for the value of the postal machinery because the GOA has recognized that debt and repeatedly promised to pay it. Before an arbitral panel was constituted to hear the claim, the parties signed an agreement in August 2005 to postpone the case and jointly appointed accounting and technical experts to examine the facts. In July 31, 2006, the accounting expert issued a report establishing a compensation for Claimant H in the range of ARP 21.6 million and ARP 38.4 million. Once the parties agree on this range, a technical expert will begin its part of the analysis. These reports will be used as the basis for final settlement negotiations.

113. (SBU)(a) Claimant I - SETTLED

(b) 2004

(c) Claimant I is a US reinsurance company that underwrote Argentina's privatized pension system between 1994 and 2001. Claimant I's liability is based upon the market value of the pension system's assets. In 2002, the GOA implemented measures that fix the price of certain pension fund assets (Argentine Government bonds) at above-market prices. Because reinsurance contract benefits were linked to the value of these assets, this regulatory measure allegedly increased Claimant I's financial obligations by 45 percent. The Claimant contended that it was entitled to compensation for the substantial losses suffered because of the manipulation of asset values and filed a request for ICSID arbitration. After holding a hearing on witnesses in September 2005, the ICSID held its first session on November 22, 2005. In March 2006, the Claimant presented a letter of discontinuance to ICSID because it had mitigated damages through negotiations with local insurance companies. The parties agreed on a settlement and proceedings were discontinued at their request on September 14. 12006.

114. (SBU)(a) Claimant J

(b) 2003

(c) Claimant J owned an interest in electrical generating plants and in an oil and gas company operating in Argentina. In January 2002, Argentina pesified dollar-denominated oil and gas supply contracts, imposed an oil export tax in alleged violation of decrees from 1992 that guaranteed export tax stability, and changed the electrical generation regulatory and legal framework based on which the company invested. Claimant filed for ICSID arbitration in June 12003. On April 27, 2006, the panel issued a decision on jurisdiction in favor of Claimant J. The Claimant filed a reply on the merits November 28, 2006.

115. (SBU)(a) Claimant K

(b) 2003

(c) Claimant K is a provider of leasing services in Argentina. Claimant K's claim was registered with ICSID on February 27, 2004. The claim asserts that various actions by the Government of Argentina effectively expropriated the value of its investment. On October 13, 2005, Claimant filed a memorial on the merits of the

case. On December 28, 2005, the GOA filed its objections to jurisdiction. Claimant K filed a counter-memorial on jurisdiction in March 2006. A final resolution on jurisdiction is expected shortly.

¶16. (SBU)(a) Claimant L

(b) 2003

(c) Claimant is an insurance company with operations in Argentina. ICSID registered Claimant L's complaint on May 22, 2003. Post has not been able to obtain details about the substance of Claimant's dispute. An arbitration panel has been selected, and the Claimant filed its Memorial on the Merits on April 28, 2004. According to the ICSID website, the panel held a hearing on jurisdiction in February 2005 and that it had jurisdiction over the claim. Argentina has filed a counter-memorial, and the ICSID website refers to a hearing on the merits in late 2006.

¶17. (SBU)(a) Claimant M

(b) 2003

(c) Claimant M are two companies, an Argentine energy firm and its largest foreign shareholder who owned interests in electrical generating plants and hydrocarbon development assets in Argentina. In January 2002, Argentina pesified dollar-denominated oil and gas supply contracts, imposed an oil export tax in violation of decrees from 1992 that guaranteed export tax stability, and changed the electrical generation regulatory and legal framework on which the company was induced to invest by pesifying dollar-denominated capacity payments and regulating the previously unregulated electrical generation industry in a way that does not allow it to be profitable. Claimants M filed their claims with ICSID in June 2003,

and the two claims are being heard jointly by one arbitration panel. The panel held a hearing on jurisdiction in March 2005. Meanwhile, the Province of Chubut Government renegotiated its hydrocarbon exploration and development concession contract with Claimant M. A provision of this concession extension agreement required Claimant M to discontinue its ICSID claim. Claimant M did so after in mid May 2007. ICSID has not yet officially announced the termination of the claim. A case has been filed before provincial courts to review the legality and the constitutionality of the new contract.

¶18. (SBU)(a) Claimant N

(b) 2004

(c) Claimant N is an oil and gas exploration and development company. Claimant N contends that its investment was effectively expropriated following the 2002 pesification of its dollar-denominated oil and gas supply contracts. Claimant N also complains that the imposition of export taxes in 2002 violated the decrees that were in force at the time of its investment. Claimant N's claim was formally registered August 5, 2004. A panel has not yet been constituted; both sides have named an arbitrator, but a president has not yet been chosen. Claimant N filed an ancillary claim to expand the case on February 14, 2006.

¶19. (SBU)(a) Claimant O

(b) 2005

(c) Claimant O is an Argentina-based company with US and German investors. It formally registered its claim on June 23, 2005. Claimant has sought \$20 million from the GOA, claiming that a local bank illegally canceled a contract in 2003 and expropriated its funds. An arbitral panel was constituted on March 27, 2006. The Tribunal held a first session March 2, 2007.

¶20. (SBU) Identification of claimants

Claimant A = Sempra

Claimant B = Enron-TGS

Claimant C = CMS - TGN

Claimant D = Louisville Gas and Electricity (LG&E Energy Corp., LG&E Capital Corp., and LG&E International Inc.) This firm's assets are now held by German-owned E-On America Inc.

Claimant E = Enron Azurix. Post Chapter XI, this firm's assets were purchased by Satellite Asset Management

Claimant F = AES

Claimant G = Pioneer

Claimant H = Unisys

Claimant I = RGA Reinsurance

Claimant J = El Paso Energy

Claimant K = CIT Group

Claimant L = Continental Casualty Company

Claimant M = Pan American Energy/BP America

Claimant N = Mobil Oil Company

Claimant O = Asset Recovery Trust

MATERA